

Bo Simmelsgaard  
Legal Advisor to the Deputy Minister  
Imaneq 1A  
Box 930  
3900 Nuuk  
Greenland  
[bosd@nanoq.gl](mailto:bosd@nanoq.gl)

Dear Mr Simmelsgaard

### Consultation comments on Bill on Local Mineral Activities

We refer to the Bill on Local Mineral Activities, released by the Greenlandic Government for public consultation on 12 October 2023 (**Bill**). We refer also to your letter of 31 October 2023 providing certain clarifications in respect of the Bill, and the comments on the Bill which will shortly be provided by the Greenland Business Association (**GBA**).

Greenland Minerals A/S (**GM**) endorses and adopts the comments of the GBA, which address many of the issues that the Bill will create for existing mineral rights holders (and the wider mining industry in Greenland) if it is enacted into law as currently written. GM notes that the issues raised by GBA are serious and should be given due consideration by the Greenlandic Government before any further legislative steps are taken in respect of the Bill.

GM makes the following additional comments on the Bill:

#### 1. The unintended consequences of small-scale mining rights in other jurisdictions

It is surprising that the Greenlandic Government is proposing this legislation now, given that so many other jurisdictions have had negative experiences with systems of small-scale mining rights.

As the Greenlandic Government may be aware, in the last decade, many countries have modified their mining laws to allow for small-scale or 'artisanal' mining activities to occur, often on an informal basis (i.e., without any requirement for a permit or licence).

While these legislative initiatives were generally undertaken with good intentions (namely poverty alleviation), the introduction of artisanal/small-scale mining systems has had a range of unintended consequences in many jurisdictions. These consequences, which have been extensively studied over the last 30 years and documented across the globe, include serious environmental damage, injury and loss of life due to unsafe work practices, growth in organised crime (in forms such as smuggling, money laundering and tax avoidance – depriving ordinary citizens of the economic benefits of national mineral resources) and violent community conflicts. Indeed, even international organisations that have traditionally supported small-scale/artisanal mining as a poverty alleviation strategy have acknowledged the problems it creates. As the World Bank noted in a 2017 report:

*"There is little ground for disputing that artisanal mining activities— in this case, the informal activities— have their share of complications and adverse effects more specifically relating to environmental and health-related concerns".*

While it is true to say that artisanal mining can play a role in economic development and poverty reduction in rural areas, it is also demonstrably the case that (i) artisanal mining activities are predominantly conducted outside of prevailing legal frameworks, in which such activities could, at



least hypothetically, be responsibly regulated (noting the impossibility of adequately policing an inherently informal artisanal mining sector); and (ii) to the extent that artisanal mining delivers those benefits, it does so at the expense of the environment, poor working conditions, and other severe social costs.

It is therefore not in Greenland's interests to introduce a new system of informal (non-licensed) small-scale mining rights. Given that the Greenlandic Government's objective is to increase the socio-economic benefits of mining for local people, the better approach would be for the Greenlandic Government to:

1. maintain the current (licence-based) regime for small scale mining (in Part 8 of the Mineral Resources Act), which, significantly, does not allow for small-scale mining licences to be granted in respect of any area covered by a commercial-scale exploration or exploitation licence (Section 34); and
2. grant licences to the many large-scale operators who have discovered commercially viable mineral resources in Greenland (and satisfied the requirements of their individual concessions and the Mineral Resources Act) and to ensure that these operators make clear and measurable employment and local content commitments to the communes in which their projects are located.

Not only will this maintain legal stability and ensure that good jobs are created for local people in the short term, but it will help Greenland meet its longer-term objective of developing an international competitive mining industry. GM stands ready to make these commitments today in relation to the Kvanefjeld Project, which will create over 300 Greenlandic jobs and deliver hundreds of millions of US dollars in royalties and tax revenue to Greenland annually over a 37-year life of mine.

Further information on the adverse impacts of small-scale/artisanal mining may be found in the following reports and studies:

1. Landrigan, Philip, et al. "Reducing disease and death from Artisanal and Small-Scale Mining (ASM)-the urgent need for responsible mining in the context of growing global demand for minerals and metals for climate change mitigation." *Environmental health* 21.1 (2022): 78.
2. Wieland, Patrick. "Hernando de Soto, the Lone Prospector and the Formalization of Artisanal and Small-Scale Mining: A Case Study from La Rinconada, Peru." *Environs: Env'tl. L. & Pol'y J.* 43 (2020): 1.
3. Hunter, Marcena. "Illicit financial flows: Artisanal and small-scale gold mining in Ghana and Liberia." OECD Development Co-Operation Working Paper 72 (2020).

GM and its consultants would be pleased to discuss these and other studies of small scale / artisanal mining with the Greenlandic Government.

## **2. The expropriatory effect of small-scale mining rights**

In its submission on the Bill, the GBA rightly points out that it is incompatible with the nature of an exclusive licence (exploration or exploitation) for the Greenlandic Government to allow third parties to enjoy the same mineral rights as are exclusively held by the licensee. In your letter of 31 October 2023, you seek to address this issue by offering the following clarification:

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*"The bill only proposes to expand locals' rights to perform mineral activities in areas cover by exploration licences, without a licence. Locals' mineral activities without a licence, does not entail any rights to be granted a licence".*

With respect, you are drawing a distinction without a difference: it does not matter that small-scale miners will not be granted a *licence* over any areas covered by existing exploration licences; what matters is that the Bill will (if enacted) make it lawful for small-scale miners to explore for (and exploit) minerals in those same licenced areas. The fact that the small-scale miner does not need a licence to do this does not change the legal reality that the Bill will (if enacted) give small scale miners the right to conduct activities that are, under the terms of the exploration licence, exclusively reserved for the licence holder.

The inevitable legal result of the enactment of the Bill is, therefore, that it will deprive exploration licence holders of their acquired property rights. This deprivation may be partial, but is still a deprivation. The law proposed in the Bill is, therefore, inherently expropriatory.

In this regard, it bears noting that, as a matter of both Danish and international law, an expropriation occurs not only when a State takes measures that result in a mandatory acquisition of property rights to *itself*, but also where the measures transfer property rights to a State-mandated third party. This is precisely what will occur under the law proposed in the Bill: property rights exclusively vested in the licence holder will be transferred to small-scale miners, who will be mandated under legislation by the State to exercise these rights. As the Bill does not propose any form of compensation for this expropriation of the rights of existing licence holders, the expropriation will (if the Bill is enacted in current form) violate Section 73 of the Danish Constitution.

GM therefore urges the Greenlandic Government to reconsider the Bill. At the very least, the Bill should be amended so that it applies only to licenses granted after the Bill takes effect, a possibility you foreshadowed at the end of your letter of 31 October 2023.

Yours sincerely

Garry Frere

Commercial Manager

Energy Transition Minerals Limited

Greenland Minerals A/S

[Garry@etransmin.com](mailto:Garry@etransmin.com)

+61 8 9382 2322

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